APPENDIX

CASELLA — Direct

"K: Any questions that come up, you expect. You see, it is illegal for you, uh, rather for you to have a bus permit as a travel agency, you understand that?

"C: Yes, that I understand. (Tr. 302)

* * *

KASTENBAUM — Direct

"Q. Can you tell us, Mr. Kastenbaum, whether Kastle Tours, Inc., under the license that it had from the City of Miami Beach at that time was entitled, under the law, to operate?

A. No, sir. That is not understood by — I don't mean to say I know more than anybody, but I don't understand that. Tours cannot operate buses. It is forbidden by the ordinances in the City of Miami Beach, just as with other communities. There are ordinances.

THE COURT: You have answered the question. Lets don't go into a lengthy discourse on general law. Ask your next question.

BY MR. BECKHAM:

Q. Can you tell us, sir, whether any tour agency under the type of license that Kastle had, was entitled to operate buses?

A. No, sir. They can't." (Tr. 891)

CASELLA — Direct

"K: . . . So, if any questions come up at all, if there are any zingers there, and if any questions come up, you don't only expect to transport night club tours for Kastle Tours, but you'll do it for anybody that you can strike a good contract with, okay?

"C: That goes for LEBLANG or anybody else?

"K: Anybody." (Tr. 302-303)

* * *

CASELLA — Direct

BY MR. WALSH:

"Q. How long did you operate Kastle Tours?

A. Approximately about from the 26th to about the 13th of January.

Q. The 26th of December, 1968, to the 13th of January, 1969?

A. Yes, sir." (Tr. 147)

* * *

CASELLA — Cross

"Q: At that time you were not in business, am I correct? You had not yet run a single tour?

A. I'm not sure. We had — I don't think so, no.

Q. And when you went back to see him the next time, you were already out of business and you were not running any tours?

A. That's right.

Q. So that at no time when you saw George Kastenbaum was Kastle Tours in operation as it were, correct?

A. Correct." (Tr. 585)

* * *

CASELLA — Direct

"A: At that time, as far as I can remember, I went into his office with my wife and I again told him of my troubles obtaining transportation. I said I was using Metro and then Metro stopped giving me buses and I was now inoperative and I came to him for help. I was upset. We didn't know where to turn, who to see, and we came back to him to find out if he could help us." . . . .

. . Q. All right, sir. At that time were you wearing any kind of transmitter?

A. Yes, sir, I was." . . .

Q. Who placed it on you?

A. Lloyd Furst (phonetic).

Q. Do you know what agency he is connected with?

A. Task Force, Florida Task Force." (Tr. 165-168)

* * *

CASELLA — Cross

"Q. How did it come about? Did Mr. Kastenbaum pursue you day after day after day urging you to come in?

A. No, sir.

Q. What happened?

A. I went to see Mr. First and explained what was happening and told him about my conversation with Mr. Kastenbaum. He then asked me if I would be willing to see Mr. Kastenbaum at that time.

Q. That is what I call a suggestion. Is that what happened? He asked you that?

A. He requested from me if I would like, you know, if it would be all right with me to see him.

Q. So that when you went back to see George Kastenbaum, it was not because of any fear or any pressure or anything else; it was because the authorities asked you to go, was it?

A. No, sir.

Q. Did you have an appointment to see Mr. Kastenbaum before Mr. First suggested or asked you to go?

A. No, sir.

Q. Did you get an appointment with Mr. Kastenbaum immediately after Mr. First asked or suggested that you do so?

A. Yes, sir.

Q. Was there any reason, any other reason, you got an appointment with Mr. Kastenbaum than Mr. First's request?

A. No, sir.

Q. And everything you did in this case was from that moment on at the direction or suggestion of the Government, wasn't it, or some government agency?

A. No, sir.

Q. Will you agree with me, sir, that every time you worked the tape recorder or some sort of device, that was at the suggestion of the Government or some Government agent?

A. Yes, sir.

Q. Would you agree that the $50,000 in cash that Mr. Yablonsky brought, that was with the cooperation or suggestion of some governmental agency?

A. No, sir.

Q. Who suggested or who got the $50,000 for you?

A. I don't know, sir.

Q. It wasn't yours?

A. No, sir.

Q. When you told Mr. Kastenbaum and later told Mr. Jacobs that you had a financial backer who was willing to pay any reasonable amount, that was at the suggestion of a governmental agency, wasn't it?

A. No, sir.

Q. Before you ever saw Lloyd First, sir, had you ever considered telling Mr. Kastenbaum or Mr. Jacobs that you had a financial backer who was willing to pay any reasonable amount?

A. I can answer that two ways, sir. Yes and no.

THE COURT: Well; answer both ways and then explain it.

A. (continuing) I never had any reason to go over and say that to them because I never had a backer. And when I did say it, I didn't say they didn't tell me to say that to him "I have a backer and I'll pay any reasonable amount." They told me to tell him I had a backer.

Q. Did they tell you what you were supposed to do? They told you to go and tell them that you had a backer?

A. Yes, sir." (Tr. 359-362)

* * *

FIRST — Cross

"Q. At the time that the Casellas came to you for the first time, you understood from them that they had absolutely no relationship at that time with George Kastenbaum, did you not?

A. I don't know what you mean by "relationship." They said they had been to his office. They had seen him once.

Q. They had had no appointment to see him; they had not been contacted by him; they had no dealings whatever with him other than the one time they went to his office.

A. That is true.

Q. Was it not your suggestion or direction that Mr. Casella should seek to re-establish himself with Mr. Kastenbaum?

A. I asked him if it would be possible.

Q. When you say "re-establish," you mean to go back and try to establish himself in a client relationship of some sort?

A. I just asked if he could re-establish the contact he had prior.

Q. Mr. Casella didn't express to you any desire to go back and see George Kastenbaum, did he, until you brought it up?

A. No, sir.

Q. Almost immediately after you made the suggestion, he called and got the appointment, didn't he?

A. I couldn't tell you when he called about the appointment. It was some time that afternoon.

Q. You knew it was done that afternoon?

A. He told me it was done, yes, sir.

Q. Was it your suggestion that Mrs. Casella accompany him on this visit?

A. I don't recall. I may have. I don't recall that I made such a suggestion.

Q. Do you recall offering or making that suggestion?

A. No, sir.

Q. Did you tell him the reason you thought he should go back to Mr. Kastenbaum and re-establish himself was so that you could record him and get him to try to have Kastenbaum say the things that he told you Kastenbaum told him back in December?

A. No, sir.

Q. Didn't you tell him you wanted to put a recorder or a transmitter on him?

A. Yes, sir.

Q. Did you suggest to him the topic of any conversation he should try to indulge in?

A. No, sir.

Q. You left him wholly on his own and just said, "go make a recording for us?"

A. Yes, sir.

Q. Had the Casellas told you about a $10,000 figure before the 23rd?

A. Yes, sir.

Q. And that when they went into the Kastenbaum office on the 23rd with the recorder, was it your understanding that they were going to try to talk or draw out from him some comments about the $10,000 figure?

A. No, sir.

Q. You did hear him deny — consistently deny to these people that he had ever said such a thing?

A. I did.

Q. He did not deny he had mentioned a figure, but he denied that he told them it would cost them that to get into business, didn't he?

A. He denied making any such statement about that figure or any other figure.

Q. Well, didn't they state to him they now had money to be paid in order to establish a business, and he told them it would take $10,000 to establish the business? Isn't that what he denied?

A. No, that is not what he denied.

Q. Well, did you dictate and sign a report of a page and a quarter, roughly, about that of January 23rd (handing document to witness)?

A. The question wasn't put to Mr. Kastenbaum by Mr. Casella in that fashion.

Q. Read with me: "He also reminded Mr. Kastenbaum of a previous meeting in regard to an approximate $10,000 figure fee to enable him to operate on the Beach"?

A. That is true.

Q. And before that, "Mr. Casella stated to Mr. Kastenbaum that he now had a financial backer and that money was no longer a problem and any reasonable amount of money could be paid in order to establish this business on the Beach"?

A. True. (Tr. 625-629)

CASELLA — Cross

"Q. Isn't it a fact that after your second meeting with Mr. Kastenbaum and after you sought out Mr. Jacobs to talk to him, you told Mr. Jacobs that you could supply the necessary money?

A. That I had a backer, yes, sir. That I had a backer.

Q. He didn't ask you anything about money. You had told him that you could supply the money?

A. That I had a backer.

Q. Is that right, sir?

A. That I had a backer, yes, sir.

Q. Did you tell him that you had a backer who could supply the necessary money?

A. I told him exactly what went on in Mr. Kastenbaum's office, exactly what went on in his office, because he was unfamiliar with it, sir. He was unfamiliar with my going there. He didn't know because I had thought that Mr. Kastenbaum had called him. But he didn't. So I filled him in on what my visit was about, what I told him and everything, and I did inform him that I had a backer who had money, yes, sir.

Q. And it was after that that Mr. Jacobs said that maybe he could be of some help and he would contact you in a few days?

A. Yes, sir.

Q. He never asked you for $10,000 or any money up until this conversation where you told him that you had a backer, did he?

A. Up until that time?

Q. Yes.

A. No, sir." (Tr. 497-498)

* * *

CASELLA — Direct

"K: Well, I wanted to give you a nice name. You know, you get this permit, right away this permit's going to be worth another $30,000, $50,000 in a year. And I probably know people willing to buy it from you, so, uh, you might as well have a nice name, if you can." (Tr. 248)

* * *

CASELLA — Direct

"K: Well, maybe, well, let me tell you, uh, if you get the permit, I think you might be offered eighty or ninety thousand dollars after you get it.

"Y: You mean that this permit is transferable"

"K: Yes." (Tr. 254)

* * *

KASTENBAUM — Direct

"A. Mr. Casella asked me if he couldn't get a permit to operate his own buses, and I asked him what kind of experience and finances he had. And he said "None." And that was the end of it as far as I was concerned, because I knew that a bus permit was an extremely valuable property right and that somebody who, in other words, wanted such a permit would have to pay a good fee and—" * * *

Q. Was there any discussion between you and the Casellas concerning the political situation in the City of Miami Beach?

A. The only thing I said to the Casellas was, "Why do you think that the City Council would grant you such an extremely valuable property right? A taxicab in the City of Miami Beach sells for $15,000. I mean, you just can't ask a City Council to grant an extremely valuable property right-period."

Q. Was there a discussion with them about people who had been on the Beach for some time or good friends or supporters of these councilmen with reference to the fact that even they couldn't get such things?

A. Yes, sir.

Q. What was that?

A. I told them that even people who contributed to campaigns $1,000 or more couldn't get such an extremely valuable property right." (Tr. 892-894)

* * *

CASELLA — Cross

"Q. Mr. Casella, could you tell me, sir, if you know of any act by George Kastenbaum that prevented you from renting buses?

A. That prevented me from renting buses?

Q. Yes.

* * *

THE COURT: The question is, sir: Do you know of any act by George Kastenbaum that prevented you from operating buses?

THE WITNESS: That prevented me from operating? No, sir. (Tr. 418-419)

* * *

CASELLA — Cross

"Q. Did Mr. Kastenbaum ever, by word or deed threaten to do anything to you if you didn't come up with some money for him?

A: No, sir.

Q. Did he ever threaten to do anything to Mr. Yablonsky if Mr. Yablonsky didn't come up with some money for him?

A. No, sir.

Q. Did he ever threaten to do anything to Kastle Tours if Kastle Tours didn't come up with some money for him?

A. No, sir.

Q. Did he ever say to you, by any word or deed, "You better come up with some money or else"?

A. No, sir." (Tr. 440-441)

* * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 30019

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

NORMAN JACOBS and GEORGE KASTENBAUM,
Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Florida

On Petitions for Rehearing and Petitions for Rehearing
En Banc

(Opinion, Sept. 29, 1971, 5 Cir., 1971, ____ F.2d ____)

(November 17, 1971)

Before BROWN, Chief Judge, and PHILLIPS,* and INGRAHAM, Circuit Judges

"PER CURIAM: In connection with the Petitions for Rehearing for each of the Appellants, the Court adds the following to its opinion. The word "fear" as it is used in the definition of extortion in subsection (b) (2) of 18

*Of the Tenth Circuit, sitting by designation.

U.S.C.A., section 1951 reading "the term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened * * * fear * * * embraces fear of economic loss."

(Pages 22a and 23a of Appendix of Kastenbaum's original petition for writ of certiorari)

* * *

YABLONSKY — Cross

"Q. At the time you put it in, it was to be withdrawn almost immediately by subpoena or warrant?

A. Yes. There was comment made to that effect." (Tr. 690)

* * *

HILL — Direct

"Q. At that time, sir, did you make the plans that the $50,000 would be immediately withdrawn from the box?

A. That's correct.

* * * *

"Q. Did you insist that Mr. Casella give you the key?

A. That's correct.

Q. Even though there was no money in there?

A. That's correct." (Tr. 864-865)

* * *

App. 16

[TITLE OMITTED]

(September 20, 1971)

Before BROWN, Chief Judge, and PHILLIPS,* and INGRAHAM, Circuit Judges

PHILLIPS, Circuit Judge: George Kastenbaum and Norman Jacobs were charged in a two-count indictment with violations of 18 U.S.C., Section 1951.

* * * *

"The fact that Casella and the F.B.I. agents did not intend to pay the $50,000 to Kastenbaum did not make such conversations constitutionally protected."

(excerpt from Fifth Circuit's Opinion-page 19a of Appendix of Kastenbaum's original petition for writ of certiorari.

EUSTIS — Direct

Q. For how long have you lived in Ohio?

A. For approximately three years.

Q. Have you ever had any dealings with a company known as Kastle Tours?

A. Yes, sir, I have. When I came down at Christmas time, from December 22nd to January 1, I took a tour with these people.

*Of the Tenth Circuit, sitting by designation.

Q. Would you say it was December — that would be December '68 or December '69?

A. I meant December '68." (Tr. 67-68)

* * *

"A. Well, I decided to go on a night club tour; so I went to the lobby in the hotel and—

* * *

A. And I saw several brochures. Theirs was one of them.

Q. Whose was one?

A. Kastle Tours." (Tr. 68-69).

* * *

EUSTIS — Cross

"Q. Have you ever heard of Kastle Tours back in Ohio or in Pennsylvania?

A. No, I had not.

Q. Had you ever heard of Kastle Tours before you reached the Driftwood Motel?

A. No, I had not." (Tr. 74-75)

* * *

EUSTIS — Cross

"Q. Miss Eustis, as I understand it, then Kastle Tours had nothing to do with your decision to come to Miami, did it?

A. No, it did not." (Tr. 77)

* * *

SILVERMAN — Cross

"Q. Mr. Silverman, you had made up your mind, or at least your Association had, to come to Miami before you ever heard from Kastle Tours, hadn't you?

A. I would assume so.

Q. The letter that you got from Kastle Tours had nothing to do with your decision to come to Miami, did it?

A. No, none whatsoever." (Tr. 345)

* * *

R. CASELLA — Cross

"Q. You were not inviting people to come to Miami Beach, were you? You were inviting them, after they got here, to use your services, is that correct?

A. Yes." (Tr. 583)

* * *